

REMARKS

The Office Action of May 11, 2007 has been carefully reviewed and these remarks are responsive thereto. Claim 1 has been amended. Claims 5-17 and 22-26 have been withdrawn. Reconsideration of the application in view of the foregoing amendments and following remarks is respectfully requested. Each of the Examiner's rejections is discussed below.

Section 102

McGlasson

Claims 1, 2, and 4 have been rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 6,256,799 to McGlasson et al. ("McGlasson"). This rejection is respectfully traversed.

McGlasson discloses a helmet 10 having a helmet cover 28 extending over the helmet.

McGlasson does not disclose or make obvious a swim cap having a first portion configured to cover at least a portion of a crown of a user's head and having a first durometer; and a second portion formed of a flexible and stretchy material configured to conform tightly to and provide tension to keep the cap tight on a user's head, secured to the first portion and having a second durometer, the second durometer being smaller than the first durometer, **wherein the second portion is configured to be in contact with and cover a substantial portion of a user's head during use**, as required by independent claim 1.

Helmet cover 28 of McGlasson is designed to cover helmet 10. It simply does not come in contact with or cover a substantial portion of a user's head during use. At best, an outer edge of helmet cover 28 may be wrapped about the outer edge of helmet 10 and be placed adjacent inner surface of the helmet (col. 3, lines 19-26).

Accordingly, the rejection is improper and should be withdrawn.

Gill

Claims 1, 2 and 4 have been rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 6,237,162 to Gill ("Gill"). This rejection is respectfully traversed.

Gill is similar to McGlasson, and discloses a helmet cover 10 designed to cover a helmet 24.

Gill does not disclose or make obvious a swim cap having a first portion configured to cover at least a portion of a crown of a user's head and having a first durometer; and a second portion formed of a flexible and stretchy material configured to conform tightly to and provide tension to keep the cap tight on a user's head, secured to the first portion and having a second durometer, the second durometer being smaller than the first durometer, **wherein the second portion is configured to be in contact with and cover a substantial portion of a user's head during use**, as required by independent claim 1.

Helmet cover 10 simply is not configured to be in contact with and cover a substantial portion of a user's head during use. It is merely designed to be positioned atop helmet 24. In fact, Gill teaches away from such a limitation by reciting that the cover may cover less than the helmet's surface, in which case it could not contact and cover a substantial portion of a user's head (col. 2, lines 48-55).

Accordingly, the rejection is improper and should be withdrawn.

Straus

Claims 1-3 have been rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 4,937,888 to Straus ("Straus"). This rejection is respectfully traversed.

Strauss is also similar to McGlasson in that it discloses a helmet cover 11 designed to cover a helmet 12.

Strauss does not disclose or make obvious a swim cap having a first portion configured to cover at least a portion of a crown of a user's head and having a first durometer; and a second portion formed of a flexible and stretchy material configured to conform tightly to and provide tension to keep the cap tight on a user's head, secured to the first portion and having a second durometer, the second durometer being smaller than the first durometer, **wherein the second portion is configured to be in contact with and cover a substantial portion of a user's head during use**, as required by independent claim 1.

Helmet cover 11 simply is not configured to be in contact with and cover a substantial portion of a user's head during use. It is merely designed to be positioned atop helmet 12. In fact, Gill teaches away from such a limitation by reciting that the cover terminates at the ear vents, which are disposed above the lower edge of the sides 22 and 24 of helmet 12 (col. 4, lines 53-55).

Accordingly, the rejection is improper and should be withdrawn.

Section 103

Claim 18

Claim 18 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Straus in view of U.S. Patent Publication No. 2002/0184688 to Ewing ("Ewing"). Ewing is cited as disclosing a plastic portion 22 formed from PETg. This rejection is respectfully traversed.

Ewing fails to overcome the deficiencies of Straus noted above. Specifically, Ewing does not disclose or make obvious a swim cap having a first portion configured to cover at least a portion of a crown of a user's head and having a first durometer; and a second portion formed of a flexible and stretchy material configured to conform tightly to and provide tension to keep the cap tight on a user's head, secured to the first portion and having a second durometer, the second

durometer being smaller than the first durometer, **wherein the second portion is configured to be in contact with and cover a substantial portion of a user's head during use**, as required by independent claim 1, from which claim 18 depends.

Accordingly, the rejection is improper and should be withdrawn.

Claims 19 and 20

Claims 19 and 20 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Straus in view of U.S. Patent No. 5,790,988 to Guadagnino, Jr. et al. ("Guadagnino"). Guadagnino is cited as disclosing a head covering with a silicone swimming cap. This rejection is respectfully traversed.

Guadagnino fails to overcome the deficiencies of Straus noted above. Specifically, Guadagnino does not disclose or make obvious a swim cap having a first portion configured to cover at least a portion of a crown of a user's head and having a first durometer; and a second portion formed of a flexible and stretchy material configured to conform tightly to and provide tension to keep the cap tight on a user's head, secured to the first portion and having a second durometer, the second durometer being smaller than the first durometer, **wherein the second portion is configured to be in contact with and cover a substantial portion of a user's head during use**, as required by independent claim 1, from which claims 19 and 20 depend.

Accordingly, the rejection is improper and should be withdrawn.

Claim 21

Claim 21 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Straus in view of U.S. Patent No. 3,979,777 to Gregg ("Gregg"). Gregg is cited as disclosing a swimming cap with a second portion formed from latex rubber to more closely conform to the contours of a wearer's head. This rejection is respectfully traversed.

Gregg fails to overcome the deficiencies of Straus noted above. Specifically, Gregg does not disclose or make obvious a swim cap having a first portion configured to cover at least a portion of a crown of a user's head and having a first durometer; and a second portion formed of a flexible and stretchy material configured to conform tightly to and provide tension to keep the cap tight on a user's head, secured to the first portion and having a second durometer, the second durometer being smaller than the first durometer, **wherein the second portion is configured to be in contact with and cover a substantial portion of a user's head during use**, as required by independent claim 1, from which claim 21 depends.

Accordingly, the rejection is improper and should be withdrawn.

Conclusion

Pending claims 1-4 and 18-21 are believed to be in form for allowance, and an indication to that effect is respectfully requested at this time. Examination of withdrawn claims 5-17 and 22-26 is respectfully requested at this time. Please apply any charges or credits to Deposit Account No. 19-0733.

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